



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JUL 22 2013

RE: MUR 6627
Journal Broadcast Group

Dear Mr. Bagwell:

On August 22, 2012 and September 11, 2012, the Federal Election Commission notified your client, Journal Broadcast Group, of a complaint and supplemental complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaint and supplemental complaint were provided to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on July 9, 2013, voted to find no reason to believe that Journal Broadcast Group violated 2 U.S.C. §§ 441a and 441b. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6627

RESPONDENTS:

Matthew Canovi

Canovi & Associates, LLC

Journal Broadcast Group

I. INTRODUCTION

This matter was generated by a complaint filed by Thomas Shane Stilson. *See*

2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in the Missouri seventh congressional district. His principal campaign committee is Mike Moon for Congress and Craig Comstock in his official capacity as treasurer (the "Committee"). Matthew Canovi produces and hosts a weekly two-hour radio program ("The Gun Show") broadcast on 104.1 KSGF-FM. Moon regularly appeared as a political commentator on "The Gun Show" prior to, during, and after his candidacy. Journal Broadcast Group ("Journal Broadcast") owns the radio station which sells airtime to Canovi to broadcast "The Gun Show." Canovi & Associates, LLC is a limited liability company owned by Canovi.

The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations in connection with Moon's acceptance of excessive or prohibited in-kind corporate contributions resulting from his appearances on "The Gun Show."

Separate responses were filed by Moon, the Committee, Canovi, and Journal Broadcast. *See* Moon Resp. (Sept. 10, 2012), Committee Resp. (Sept. 10, 2012), Canovi Resp. (Sept. 27, 2012), and Journal Broadcast Resp. (Oct. 1, 2012). As detailed below, the Commission found no

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1 reason to believe that Respondents violated the Act by making or accepting excessive or
2 prohibited in-kind corporate contributions.

3 **I. FACTUAL AND LEGAL ANALYSIS**

4 Beginning in May 2011 (several months prior to Moon becoming a candidate), and
5 continuing after his loss in the August 2012 Republican primary, Moon regularly appeared as a
6 political commentator on "The Gun Show," a weekly two-hour radio program hosted by Canovi.
7 Moon Resp. at 1; Canovi Resp. at 1. The show is broadcast on 104.1 KSGF-FM ("KSGF"), a
8 Springfield, Missouri radio station owned by Journal Broadcast. Journal Broadcast Resp. at 1.
9 Moon's participation on "The Gun Show" typically was limited to approximately five minutes of
10 airtime in the second hour of the show, with the last two or three minutes allotted for political
11 commentary.¹ Moon Resp. at 1.

12 The Complaint alleges that the radio show appearances constitute unreported in-kind
13 contributions because Canovi and Moon advocated Moon's election and solicited contributions
14 for his campaign. Compl. at 1. Moon acknowledges that his commentary was political in nature
15 and that, although he periodically mentioned his candidacy, he did not do so in every appearance.
16 Moon Resp. at 1. Moon further states that he did not provide his usual commentary on June 9,
17 2012, when he hosted "The Gun Show" in Canovi's absence. *Id.* According to Moon, there was
18 one mention of his Committee's website and one mention of an upcoming campaign rally. *Id.*
19 He denies soliciting contributions during his appearances on "The Gun Show." *Id.* Canovi

¹ Moon states that the first hour of the Show involved discussions of the latest advances in firearms (or the specific topic of the day) and the second hour involved a discussion of Second Amendment issues. *Id.*

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1 confirms that Moon was a political commentator during the second hour of "The Gun Show"
2 before, during, and after Moon's candidacy.² Canovi Resp. at 1.

3 Journal Broadcast states that it is the licensee of KSGF and that "The Gun Show" is
4 independently produced and hosted on airtime sold to Canovi, an unrelated third party.³ Journal
5 Broadcast Resp. at 2. Journal Broadcast further states that Canovi is not an employee of either
6 KSGF or Journal Broadcast and that he purchases two hours of airtime on KSGF at the same
7 market rate that the station sells time for more traditional advertisements.⁴ *Id.* Journal Broadcast
8 provides a staff person to operate the radio control board during the broadcast of "The Gun
9 Show," which is included in the cost of the airtime, but Journal Broadcast has no involvement
10 with the show's content.⁵ *Id.*

11 The Complainant supplemented the initial allegation with information relating to
12 archived podcasts of 38 airings of "The Gun Show" between October 16, 2011, and August 4,
13 2012.⁶ *See* Compl. Suppl. (Sept. 11, 2012). Our review of the available podcasts indicates that
14 Moon appeared on 28 of the 34 shows aired during his candidacy and that Moon and Canovi
15 either referred listeners to the Committee's website or encouraged listeners to support Moon's

² The available information indicates that Canovi is the sole owner of Canovi & Associates. There is no information to indicate that Moon receives any type of compensation from Canovi or Journal Broadcast for his hosting duties.

³ The sole shareholder of Journal Broadcast Group is Journal Broadcast Corporation which operates as a subsidiary of Journal Communications, Inc. Journal Broadcast Resp. at 1.

⁴ Complainant asserts that Canovi pays \$250 per hour for the airtime, or \$2,000 per month. Compl. at 2.

⁵ Journal Broadcast further responds that the Complaint does not allege a violation on its part and further denies that it has made any contributions to Moon's campaign or that it has any materials relevant to the Complaint. Journal Broadcast Resp. at 3. It requests that the Commission dismiss it as a Respondent in the matter. *Id.*

⁶ Although Complainant refers to Moon as Canovi's co-host, the podcasts indicate that Moon generally provided political commentary during the last five minutes of the show rather than being present and involved in the discussions during the remainder of the show. However, there are a few instances when Moon appeared on the show and participated in the general discussion. *See generally* Compl. Suppl.

1 candidacy during 19 of those 28 shows. *Id.* During three of those 19 shows that referenced
2 Moon's candidacy, Moon and Canovi also solicited financial support for Moon's campaign or
3 Canovi encouraged listeners to contribute to Moon's campaign by asking listeners to support
4 "like-minded" candidates. *Id.* (claiming that solicitations took place on February 25, April 28,
5 and June 23, 2012). The Supplement also asserts that, from the inception of the campaign, Moon
6 placed campaign material, at no charge, in every one of the electronic newsletters distributed by
7 Canovi; the Complaint alleges that the Committee failed to report the receipt of an in-kind
8 contribution from Canovi and failed to place a proper disclaimer on the advertisement.⁷ *Id.* at 3.

9 The Act prohibits corporations from making contributions to federal candidates or their
10 committees. 2 U.S.C. § 441b(a). The Act also prohibits an individual from making a
11 contribution to a candidate or authorized political committee in any calendar year which
12 aggregates in excess of \$2,500. 11 C.F.R. § 100.52(a) (2012 cycle). "Anything of value"
13 includes an in-kind contribution. 11 C.F.R. §§ 100.52(d)(1), 100.111(a). All political
14 committees are required to file reports of their receipts and disbursements. 2 U.S.C. § 434(a).

15 Contributions do not include "any cost[s] incurred in covering a news story, commentary
16 or editorial by any broadcasting station (including a cable television operator, programmer or
17 producer), Web site, newspaper, magazine or other periodical publication . . . unless the facility
18 is owned or controlled by any political party, political committee, or candidate[.] 11 C.F.R.

⁷ Moon did not specifically respond to the allegation regarding the newsletter and Canovi responded that he was unclear as to how to respond to the information contained in the Supplement to the Complaint as it cited to no particular statutory provision. See Moon Resp. at 1-2; Canovi Resp. at 1. It appears that Complainant is alleging that the Committee received an in-kind contribution from Canovi since Canovi sells advertising and sponsorships for the newsletter and failed to place the proper disclaimers on the advertisements. We reviewed the archived newsletters available on Canovi's website, but could not locate any editions that contained any type of Moon advertisements. See <http://www.mattcanovi.com> (last accessed on Jan. 23, 2013). Based on the lack of available information supporting Complainant's allegation, the Commission found no reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and 441f by failing to report the receipt of a potentially prohibited in-kind corporate contribution and by failing to place the appropriate disclaimer on the alleged advertisements.

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1 § 100.73; *see also* 2 U.S.C. § 431(9)(B)(i) (exempting certain news stories, commentaries, or
2 editorials from the definition of expenditure); 2 U.S.C. § 434(f)(3)(B)(i) (exempting
3 communications within certain news stories, commentaries, or editorials from the definition of
4 electioneering communication). This exclusion is known as the "press exemption."

5 If the press exemption applies to Canovi, there is no resulting in-kind contribution to
6 Moon or the Committee. On the other hand, if the press exemption does not apply to Canovi,
7 Moon's appearances could constitute a prohibited corporate or excessive in-kind contribution to
8 the Committee.⁸

9 The Commission conducts a two-step analysis to determine whether the press exemption
10 applies. First, the Commission asks whether the entity engaging in the activity is a press entity.
11 *See* Advisory Op. 2005-16 (Fired Up!). Second, in determining the scope of the exemption, the
12 Commission considers (1) whether the press entity is owned or controlled by a political party,
13 political committee, or candidate, and if not, (2) whether the press entity is acting as a press
14 entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press
15 function"). *See Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).
16 If the press entity is not owned or controlled by any political party, political committee, or
17 candidate, and if it is acting as a press entity with respect to the conduct in question, the press
18 exemption applies and immunizes the activity at issue.

19 In determining whether Canovi & Associates qualifies for the press exemption, we first
20 consider whether it is a press entity. When conducting that analysis, the Commission "has
21 focused on whether the entity in question produces on a regular basis a program that

⁸ Canovi & Associates is Canovi's limited liability company. Commission regulations provide that, so long as a limited liability company does not opt to be treated like a corporation for tax purposes, a contribution from a limited liability company is treated as a contribution from a partnership. *See* 11 C.F.R. § 110.1(g)(3).

1 disseminates news stories, commentary, and/or editorials.” Advisory Opinions 2010-08
2 (Citizens United), 2007-20 (XM Satellite Radio, Inc.), 2005-19 (Inside Track).⁹ The available
3 information indicates that Canovi & Associates is in the business of producing on a regular,
4 weekly basis a talk radio program discussing issues related to the Second Amendment. It is
5 therefore a press entity. See Advisory Opinions 2007-20 (XM Satellite Radio, Inc.) and 2005-19
6 (Inside Track) (applying the press exemption to a radio program where the host operated a
7 corporation that produced a show and purchased airtime to broadcast her show). That Canovi
8 has supported Moon’s candidacy is irrelevant because the Commission has determined that “an
9 entity otherwise eligible for the press exemption does not lose its eligibility merely because of a
10 lack of objectivity in a news story, commentary, or editorial.” Advisory Opinions 2010-08
11 (Citizens United), 2005-19 (Inside Track), 2005-16 (Fired Up!).

12 We next consider whether the press entity is owned or controlled by a political party,
13 political committee, or candidate. Available information indicates that Canovi & Associates is
14 not owned or controlled by a political committee, political party or candidate. Although Moon
15 regularly appears on “The Gun Show” as a guest, there is no information suggesting that he (or
16 any other candidate, committee or political party) has any ownership interest in the entity. All
17 available information indicates that Canovi controls the content of the entire show.

18 We also consider whether the press entity is acting in its legitimate press function with
19 respect to the activity at issue, paying particular attention to whether the materials under
20 consideration are available to the general public and whether they are comparable in form to
21 those ordinarily issued by the entity. Advisory Opinions 2010-08 (Citizens United), 2005-16

⁹ The Commission has also noted that the analysis of whether an entity qualifies as a press entity does not necessarily turn on the presence or absence of any one particular fact. Advisory Opinions 2010-08 (Citizens United), 2007-20 (XM Satellite Radio, Inc.), 2005-19 (Inside Track).

1 (Fired Up!). "The Gun Show" is available to the general public residing in or near Springfield,
2 Missouri, which includes potential voters within Missouri's seventh congressional district. *See*
3 <http://www.ksgf.com> (last accessed January 22, 2013). Podcasts of "The Gun Show" are also
4 available for download through the radio station's website. *See*
5 <http://www.ksgf.com/podcasts/thegunshow/> (last accessed February 2, 2013). In addition, a
6 review of the podcasts provided by Complainant indicates that "The Gun Show's" format was
7 similar to those shows ordinarily produced by and paid for by a press entity.

8 Complainant takes issue with the frequency with which Moon appeared on "The Gun
9 Show" and the fact that he and Canovi expressly advocated Moon's candidacy. Compl. at 1;
10 Compl. Suppl. at 1. The Commission, however, has held that intermittent requests for
11 contributions to a candidate's campaign do not foreclose application of the press exemption, as
12 long as the entity is not owned or controlled by a political committee, political party, or a
13 candidate and the entity is not serving as an intermediary for the receipt of the contributions. *See*
14 Advisory Op. 1980-109 (Ruff Times); *see also* Advisory Opinion 2008-14 (distinguishing
15 between "regular" and "intermittent" express advocacy and solicitations). It further appears that
16 "The Gun Show", for the most part, has consistently followed the same format, which did not
17 include expressly advocating for Moon's candidacy or soliciting contributions to his
18 Committee.¹⁰ *See generally* Compl. Suppl. Since the three solicitations of funds for Moon's

¹⁰ We note, however, that there was at least one show, and possibly two, that aired during Moon's candidacy where he hosted the entire show. *See* <http://www.ksgf.com/podcasts/thegunshow/158302525.html> (last accessed Jan. 22, 2013). While Complainant alleges that Moon also hosted the June 3, 2012, show in Canovi's absence, we were unable to locate a podcast for this particular show. In addition, there were some shows during his candidacy where Moon's appearance lasted longer than the customary five minutes allotted at the end of the second hour. *See, e.g.,* <http://www.ksgf.com/podcasts/thegunshow/164125606.html> (June 28, 2012) (last accessed Jan. 22, 2013).

In previous MURs, the Commission has held that the press exemption applies in instances where the program format does not change after the individual becomes a candidate. *See* MUR 5555 (Ross) (radio talk show host who became a candidate was eligible for the press exemption where program format did not change after he

1 candidacy are not a regular, fixed part of "The Gun Show," it does not prevent "The Gun Show"
2 from satisfying the press exemption requirements. Therefore, we conclude that "The Gun Show"
3 was acting in its legitimate press function with regard to Moon's appearances.

4 We thus conclude that Moon's appearances on "The Gun Show" do not constitute
5 excessive or prohibited in-kind corporate contributions to the Committee in violation of 2 U.S.C.
6 §§ 441a or 441b.

7 As to Journal Broadcast, the available information indicates that, because Canovi
8 produces "The Gun Show" and maintains control over its content, Journal Broadcast was acting
9 as an entrepreneur and not a press entity exercising its "unfettered right... to cover and comment
10 on political campaigns" when it sold airtime to Canovi & Associates to broadcast "The Gun
11 Show." See Advisory Op. 1982-44 (DNC/RNC), citing H.R. Report No. 93-1239, 93d Congress,
12 2d Sess. 4 (1974); see also MUR 6089 (Hart) (citing to MUR 5297 (Wolfe) (concluding that the
13 station acted as an entrepreneur, not press entity, when it aired a show hosted by Wolfe because
14 Wolfe paid for the airtime and maintained complete control over the content of the show)).
15 Therefore, we conclude that Journal Broadcast Group and KSGF have not made any prohibited
16 or excessive in-kind corporate contributions to the Committee in violation of 2 U.S.C. §§ 441a or
17 441b.

18 Accordingly, the Commission found no reason to believe that Journal Broadcast Group,
19 Canovi, and Canovi & Associates made and the Committee accepted a prohibited or excessive
20 in-kind corporate contribution based on Moon's appearances on "The Gun Show" during his
21 candidacy in violation of 2 U.S.C. §§ 441a and 441b.

began to consider candidacy) and MUR 4689 (Dorman) (radio guest-host who later became a candidate was eligible for the press exemption for commentary critical of eventual opponent when there was "no indication that the formats, distribution, or other aspects of production" were any different when the candidate hosted than they were when the regular host was present).